

But we want to make sure the American people know what is going to happen if the flawed logic is employed that if we don't vote on a tax increase, it is not really a tax increase, when in fact if people pay more money, that is a tax increase. The American people need to know that.

I appreciate my colleague coming down to the floor tonight.

#### TORT REFORM

The SPEAKER pro tempore (Mr. ELLISON). Under the Speaker's announced policy of January 18, 2007, the gentleman from Missouri (Mr. CLEAVER) is recognized for half the remaining time until midnight.

Mr. CLEAVER. Mr. Speaker, I appreciate the opportunity to stand here on this floor.

The subject of this special hour will be a debate between myself and the gentlewoman from West Virginia, Mrs. CAPITO. But before we begin our debate, which is aimed primarily at demonstrating to our colleagues that we can speak passionately about a matter and still avoid name calling or irreverence or incivility, before we get into our debate on tort reform, I would like to yield to the gentlewoman from West Virginia for some special comments unrelated to our debate.

IN MEMORY OF JUANITA MILLENDER-MCDONALD  
AND THE VICTIMS OF THE VIRGINIA TECH  
TRAGEDY

Mrs. CAPITO. Mr. Speaker, I would like to thank the gentleman from Missouri. I look forward to our second debate, our second civil debate on a new topic.

Before we move to the subject at hand, I would like to join with my colleagues in expressing my deep sorrow at the passing of our colleague, JUANITA MILLENDER-MCDONALD. Just briefly, she was a kind and gentle person. She was a great advocate for many things that she believed in. She was a pioneer. But, for me, she was just a very helpful and warm and friendly person.

When I came to Congress, she had already been here for several years. She was the chairman of the Caucus on Women's Issues, and I was the vice chair for the Republican side. JUANITA was always very helpful, always very concerned that I was making my way in my first several months in Congress, and I think the way she crossed the aisle, the way that she treated me with kid gloves, so-to-speak, in the beginning of my term, is something that I will never forget. So my thoughts and prayers are with her. Bless her family during this very tough time, and know that she will be missed.

I would also like to express publicly before this body and before this Nation my deep sadness over the tragic events at Virginia Tech last week. I haven't spoken publicly on the House floor about this, but it is deeply crushing to all of us, has been, and it has sort of set a pall or a feeling of helplessness for all of us.

I have college age children. I can't imagine the despair the families are feeling who have lost a loved one, to realize that that phone call that you are waiting for is never going to come.

So, to my friends in the Virginia Tech community, many West Virginians attend Virginia Tech. We have a great fondness for Virginia Tech, except possibly when we are playing them in football. But certainly our collective hearts go out to them during this difficult time.

I yield back to my friend from Missouri, and we will kick off the evening.

□ 2300

Mr. CLEAVER. Mr. Speaker, I would like to associate myself with the comments of the gentlewoman from West Virginia (Mrs. CAPITO). I too would like to express sympathy to Ms. MILLENDER-MCDONALD's family and to the families of those young people whose lives were senselessly taken at Virginia Tech.

The issue surfaces from time to time that there is a desperate need for us to do something major legislatively for tort reform, that these greedy trial lawyers are out damaging if not destroying the Nation, running people out of the medical profession, creating economic problems for oil companies. I take a different view of that. Obviously, there are inappropriate lawsuits, and I think the courts usually deal with those.

But trial lawyers work to provide somewhat of a level playing field for most Americans, small Americans, so they can hold even the most powerful corporations accountable for their actions when they cause injury or death.

Today drug companies and oil companies, big insurance companies and large corporations too often dominate our political process and they begin to ask legislators to restrict access to the courts. When corporations and CEOs act irresponsibly by refusing or delaying to pay insurance claims, producing unsafe products, polluting our environment or swindling their employees or shareholders, the last resort for Americans, and this is our system, is to hold them accountable in our courts of law. By holding them accountable, trial lawyers and their families are able to feel that this is a safer America.

From automobile fuel tanks that explode in rear-end collisions to bullet-proof vests that fail to stop bullets aimed at police officers, we have to realize that there must be some corporation, some individual held accountable. And these cases that I mentioned earlier were actual cases and they brought to light deceptive practices and cover-ups by manufacturers that resulted in serious injury and even death.

The civil justice system helps provide compensation to those that are injured and helps prevent other needless injury from occurring.

I will now yield to the gentlewoman from West Virginia (Mrs. CAPITO).

Mrs. CAPITO. Thank you, I appreciate your opening statements. This

may be a very civil debate because I couldn't agree with you more in that our civil justice system should be readily available, should be the place for the individual to seek redress when they have been wronged by either a corporation or corporate injustice or product failure. And I think that is the intent of our court system.

However, what we are experiencing now in the United States is an overabundance, a glut of lawsuits that are clogging our courts, that are in some cases awarding outrageous jackpot types of awards, and because of that, because of that jackpot sort of mentality, many people with their legal assistance are clogging the courts so that those people who have suffered injustices and those people who are due awards are unable to get there.

One of the issues that I think is extremely important is the cost to our economy. We talk all of the time on the floor about the importance of small businesses in the United States. I come from a small State, and I think small business comprises close to 90 percent of the businesses in our State. When you look at the burden of the current tort system on our small businesses, we are breaking the backs of our small business people.

I would like to refer to my chart over here: effect on small business, the tort liability price tag for small businesses in America is \$88 billion a year.

Small businesses bear 68 percent of business tort liability costs, but only take in 28 percent of business revenue. And for the very small businesses, the tort liability price tag is \$33 billion.

These are statistics that show, and this is from an independent resource, it is not from a group that is shaded one way or the other. It has shown the rise in the cost of tort claims in this country.

Very small businesses pay 44 percent of tort liability costs out of pocket as opposed to through insurance. And so what happens is a lot of times small businesses, one small business is one large case or one frivolous lawsuit away from having to close their doors.

I yield back to the gentleman from Missouri to see if he has a reaction to that.

Mr. CLEAVER. I think there are perhaps some legitimate concerns by small business owners, but I don't think that the trouble is with the litigation. I think the problem is with insurance companies. Now, the gentlewoman and I both serve on the Financial Services Committee; and one of the concerns we have been grappling with, particularly in the aftermath of Hurricanes Katrina and Rita on the gulf coast, is that insurance companies that are not regulated by the United States Federal Government from time to time are the culprits, and I will get back to that in just a minute. But I wanted to say that the tort filings in State courts have declined by 10 percent since 1994. And automobile filings which make up the majority of tort claims have fallen 14 percent.

So what you are finding is that more and more cases are not finding their way into the courts. But what troubles me and I think will trouble Americans when they find out more about it is the fact that the insurance companies end up really being the beneficiaries in the debate that occurs from time to time in this country on the subject of tort reform. The reason I say that is that there was a study done that showed that even in States where tort reform occurred, insurance premiums never dropped, and in some instances they actually increased.

So we have a problem with the small businesses that I agree exists, but I am suggesting that one of the ways in which we deal with this problem is not trying to restrict the courts from dealing with the claims that people bring before them, but rather for the insurance companies.

Let me give one example, Mr. Speaker. A month after passing malpractice caps, South Carolina's two largest insurers increased rates by as much as 22 percent after increasing their rates by 27 percent the year before.

And after Texas passed rate caps in 2003, the Joint Underwriters Association requested a 35 percent premium increase for physicians and 68 percent for hospitals. This is after tort reform, after things were supposed to have been reformed so that people are protected. So the winner ends up being the insurance companies.

Mrs. CAPITO. I am glad you brought up medical malpractice reform because in West Virginia we have lived this subject since I have been in Congress. In the campaign of 2002, many doctors were leaving the State of West Virginia, closing up shop, early retirement, choosing to try another State because of either the unavailability of medical malpractice insurance or the astronomically skyrocketing escalation of medical liability reform.

So an interesting thing happened. West Virginia is known to be a State that is very tort friendly. So people asked me how did the State legislature, which is predominantly Democratic, and the Governor, who was Democrat, how were they able to pass with relative ease such massive medical malpractice reform legislation. I know exactly how because I was in that campaign in the 2002 year.

□ 2310

It was people coming up to you on the street saying my doctor's leaving. It was grandparents, it was seniors, it was pediatricians, OB/GYNs, neurologists, trauma specialists. Our largest hospital in my community had to close and be downgraded in terms of their trauma because the trauma surgeons left because of the high cost of medical liability reform causing, in one case, a young child in Putnam County, which is like 30 minutes away, had to drive all the way to Cincinnati, he and his parents, 4 hours away, to have a penny removed from his windpipe because

there was no one to do it in our local area. That could have been a life-ending experience for that family, a very, very tragic one, and actually had a happy ending.

So the legislature got on board, the Governor got on board and passed State medical malpractice reform with a cap. I believe it is a half million dollars on noneconomic damages. I am not 100 percent sure. There was a debate on 250 or 500, but I think it was 500. They created a West Virginia Mutual Insurance Company, and according to the statistics that I have in front of me, those medical malpractice premiums have gone down 5 percent in not only general practice but also in the specialties.

The large hospital I referred to earlier, where they could not recruit and retain physicians, they now are adding 49 and 50 new positions a year, whereas before they were afraid they were not even going to be able to attract 15 or 20.

So this medical liability reform has had a phenomenal effect in our State of West Virginia. And if I can get my other chart out here real quick, this shows some States that are considered to be in crisis, which I notice your State is in crisis over here, and West Virginia would have been in the red, in the crisis area, but we moved ourselves out to caution. We are in the yellow area, where we were actually considered one of the most difficult climates for practitioners of medicine to come. We are not a State where we are able to retain and control, and it is directly attributable to the medical liability reform bill that we passed, that the State passed in 2003.

Mr. CLEAVER. May I inquire of the gentlewoman from West Virginia, the white States are what?

Mrs. CAPITO. Stable. They are considered stable. Look over here, California, which is held up to be one of the States that passed medical liability reform in the 1970s, it is considered stable, and West Virginia was modeled after what was done in California.

Mr. CLEAVER. I think, to some degree, that helps my position, not with West Virginia because I am not familiar with West Virginia, but you are absolutely right about my home State of Missouri. But it all relates back to my earlier comments about insurance companies.

A national study conducted in 2005 by former Missouri Insurance Commissioner Jay Angoff found that insurance companies have been price-gouging doctors by dramatically and drastically raising their insurance premiums, even though claims for payments have been flat or decreasing. According to the annual statements of 15 large insurance companies, the 15th largest in fact, the amount malpractice insurers collected in premiums increased by 120.2 percent between 2000 and 2004, while claim payouts rose by only 5.7 percent.

I think if you look at the report from Jay Angoff from the Missouri Insur-

ance Commission, you find that clearly the insurance companies are the ones doing enormous damage to this country.

The other issue is that I think the insurance companies have gouged so much that many of the people in the country, probably even in my home State, operate under the assumption that malpractice costs run physicians away from their profession.

The truth of the matter is that, according to the American Medical Association, the number of physicians in the United States of America increased by 40 percent since 1990, 40 percent. And so more and more men and women are going into the profession, even as the insurance companies are creating this crisis, and they are the ones that seem to be held harmless. They are rarely the center of the debate. It is usually the lawyers and the physicians.

I take the position that neither of them are actually the villains here. It is the insurance companies that continue to increase the rates. They pay out less money in the payments and then they are getting fatter and fatter.

One last comment on this. According to the Bush administration's Justice Department, if I can find their study, the Justice Department actually says that we are dropping in the number of cases that are being brought forward in the courts, and so I think what we end up doing, I think, is fighting a ghost, because the insurance companies have become ghostly in that they can become invisible during the debate because they do not have to get in it because they have not been portrayed as either the victim or the villain. So I would suggest that our positions may not be dramatically different except that I see the problem more in the hands of the insurance companies.

Mrs. CAPITO. Well, I think I would like to go back a little bit to medical malpractice, talking about it. See, I think you were making my case for me when you said the situation in Missouri, because you do not have medical liability reform, correct?

Mr. CLEAVER. That is right.

Mrs. CAPITO. You have skyrocketing costs of your medical liability. A lot of doctors, and I am sure you have had this conversation with the doctors, they practice basically with one arm tied behind their back because they are practicing medicine defensively. Nearly 80 percent of the doctors say they order unnecessary tests, and 74 percent say they make unnecessary referrals to specialists due to the fear of being sued. A lot of doctors are practicing defensive medicine, ordering many more medical procedures and tests to cover themselves in the case of a legal test or a lawsuit, and that raises the cost of not only their insurance but it also raises the cost of every individual's health insurance because it raises the cost of practicing medicine or delivering health care in a general sense.

I think that a comprehensive solution is certainly part of what we need

to look at here, and that does include the insurance companies most certainly, but it also includes looking at what has happened in some manufacturing segments that have had extreme loss of jobs; 52,000 to 60,000 jobs have been lost in the manufacturing segment of this country because of bankruptcies being caused by massive and huge tort lawsuits. And so I think that there is a median here, there is an easy median that we can find here.

But I would recommend to you that the experience that we had in West Virginia with medical liability reform, across the board, bringing more specialists in as a result, bringing the cost of medical liability insurance down, recruitment and retention of physicians is something that we need to look at nationwide, and that is why I support a Federal medical liability reform which I am sure is no surprise to you that I would support that and have been pushing for it over the last 7 years.

But I think there is also a cost to just the individual person as we inflate the cost of defending ourselves, businesses defending themselves, doctors defending themselves, hospitals defending themselves.

My final chart here, and I do not know if you can read it or not, but I will read the bottom line here. It shows that in 2005, the U.S. population being approximately 296 million, that the tort cost per capita for each individual is \$880.

□ 2320

Whereas when you were talking about 1990 with the physicians, in 1990, that cost was only \$522, which is still too much. So I think that we need to find a medium here where we can control frivolous lawsuits, where we can control the ability of people to have mass tort actions and seek friendly environments for those tort actions. And we tried to address that in Congress with a class action reform. And we need to make sure that those people that are damaged, hurt, have access to court, but also in a timely manner. With all this massive tort legislation or lawsuits in our courts, it is bogging up the courts and it is really hurting those people who are genuinely hurt and need to have remedies.

Mr. CLEAVER. The gentlewoman from West Virginia makes a good point. I do, however, think that this may cause her to join me. That is, according to the Bush administration, this is what I was looking for earlier, this is from the Justice Department of the Bush administration, their researchers found that the median inflated adjusted award in 2001 was just \$28,000. And most of the discussion, you hear people talking about, millions, maybe even billions, but the average median inflated adjusted award in 2001 was \$28,000. And even in medical malpractice cases in which the injuries tend to be far, far more serious than the average tort case, the median award was only \$170,000, which is far

from the multibillion dollar lottery tort reformers have often brought before us.

The other issue that I would like to bring forth is that, according to the Congressional Budget Office, malpractice costs amount to less than 2 percent of the overall medical cost. And so when we start talking about the cost of medicine and how it is skyrocketing, and it is, but when you think about the fact that the cost for malpractice or the cost for the insurance, which supercedes the cost really paid out, it accounts for only 2 percent of the overall medical costs in the United States, which is Herculean; but 2 percent is almost nonexistent.

And I think what has happened is that we have created a mountain out of a mole hill. That is not to say that there are not problems, but judges will quite often tell a lawyer that the case submitted is simply frivolous, and that case will never come to court, and then of course summary judgments can also prevent cases from ever coming to court. So judges have the option of looking at a case and deciding whether or not it is worthy of taking up the time and resources of the court.

And then the other part of it is that in an overwhelming majority of these cases, the amount or the award of the judgment is set by a jury, which are everyday people. And this is not to say that there should not be something done. I just think putting artificial caps would be the wrong thing to do. And that is generally one of the proposals that comes up. I'm not sure if the gentlewoman from West Virginia is supporting caps or not, but I think that if that is one of the solutions, I think a one-size-fits-all kind of solution is unfair to people who may suffer a very, very debilitating injury in the same category of someone who has a fender bender.

I yield back to the gentlewoman.

Mrs. CAPITO. Well, I think you are getting to the point here where you are talking about the difference between a legitimate claim and a frivolous claim.

I don't have statistics in front of me, but I know they exist in every court in America where certain frivolous lawsuits are put out on the table, they overreach in terms of not only are they suing maybe a business, but they are going to sue the manufacturer, they are going to sue the car they rode to go to work in, they are going to sue, you know, anybody with deep pockets is going to get sued for an alleged wrong. And it is absolutely a fact that some of these cases and more and more of these cases are not founded in legitimate fact. They are frivolous. They are trying to get into the system to get a quick fix, to get a lottery mentality, to have the corporation settle, or whoever settle, so they can get in and get out of the court system, and then have their attorney take a 40 or 50 percent cut from that.

I had a very startling thing happen to me. A gentleman approached me at a

political gathering a couple of years ago. He had oxygen, he was walking very slowly. And he came up to me and he said, I have asbestosis, and I have lung disease from that. And I took my case to court with my lawyer. And he didn't tell me how much he was awarded, but he was awarded some remedy for that. And it was very obvious that he had difficulty breathing, and it was very obvious that he needed some help, a lot of help.

But what he wanted to show me that day was the invoice. He got a settlement every month or every two months, a pay-out, or it might have even been every year. But he showed me how much he got, and I think it was around \$1,500. And every single time he gets that he has to take off 40 percent of that, or 45 percent of that, I think it was 40 percent in this case, for his attorney. Every single time he gets a payment, his attorney gets 40 percent. And this guy was on oxygen, could barely walk. And I think, you know, there is something wrong with the system where the harmed person who needs the help and has a legitimate claim, and certainly I know lawyers take risks by taking cases, I understand that part of it, but sometimes it just seems astronomical to me that the fees are 40, by the time you get expenses, and 50 percent of what the court has determined that victim is due and willing. I think that is an injustice in the system, along with the frivolous lawsuits that we see clogging up our courts so this gentleman can get his case heard.

Mr. CLEAVER. The meritless cases, however, rarely ever win in the first place. I was offended when I first heard that somebody sued McDonald's because they ordered a cup of hot coffee and were burned by the hot coffee that they ordered. I was offended by that as well, and I think most Americans are. But in reality, the meritless cases rarely ever win in the first place, and that is contrary to the allegations that generally come forth, particularly from the major corporations.

They would have us believe that the frivolous lawsuits are just automatically finding their way to the courtroom and that they are meritless, but they win. And the truth of the matter is that our intricate system, with the law and juries and judges and even independent reviewers, will pretty much weed out the frivolous lawsuits. And they are filed to no one's benefit, except a lawyer, who I think we can find one in any profession who is going to try to take advantage of their system. And it has nothing to do with having gone to law school. It has something to do with human nature.

But I think that the way that this whole issue has been played out ends up actually protecting the one entity that I think is the most culpable, and that is the insurance companies that are not regulated.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. There being no Republican hour at this time,

the gentleman from Missouri is recognized for the remainder of the hour.

Mr. CLEAVER. I would yield to the gentledady from West Virginia for closing remarks on the debate with regard to tort reform, and then I think we would like to express some concerns about civility, Mr. Speaker.

□ 2330

Mrs. CAPITO. Mr. Speaker, I thank the gentleman for staying up late, and I thank all those who are listening.

I think we have talked a lot about our different perspectives on tort reform. I have talked about the need to rein in the system, because we are losing jobs. We are costing the American public, each individual, \$880 is the cost for every individual for the lawsuit glut that we have in this country. Unfortunately, some of those who are damaged or who are due and willing are unable to get into a clogged-up court system.

We are losing jobs in some of our manufacturing segment because of the exorbitant cost of litigation. In many States, we have a medical liability crisis where physicians are paying exorbitant amounts of their hard-earned dollars for the cost of medical liability insurance, and it has proven in my State, at least, if you pass good sense medical liability insurance reform, you can rein in the cost of insurance and can make the system better. I understand there are other players at the table here. There is the Bar, there is the individual, there is certainly the business community and there is the insurance community.

I think the best solution to this enormous problem, this very costly problem to the American economy, is to get everybody at the table for common sense reform. We passed class action reform, and it is helping to weed out some of those large and unwieldy cases and make them adhere to more stringent requirements.

With that, I yield back to the gentleman from Missouri to close on this topic.

Mr. CLEAVER. Mr. Speaker, there are people all around this country who look at C-SPAN on a daily basis and who look listen to radio talk shows, look at television news programs, and they see Members of Congress, both House and Senate, screaming at each other. They see from time to time the animated debates that take place on these shows, and even here in this great hall.

Many, many great patriots have stepped into the well of the House of Representatives to wax eloquent, because this is the place where the great orators stood and presented their cases to each other and to the American public. But in the past decade or so, we have seen a dramatic drop in the civility exercised by Members of this body, and we have seen it from both sides of the aisle.

Let me share something with you that I read the other day by William

Penn, the founder of Pennsylvania. He said this: "I know of no religion that destroys courtesy, civility or kindness." That is the kind of statement that the Members of this great body ought to keep in mind when we step into the well.

I came to Washington and to the Congress with this desire in my heart, to do what I could to make this a more civil place. With the intensity and intention of debate, sometimes it is difficult to restrain ourselves. But restraint is something that we can do and feel better about having done it on the morrow. It is delayed satisfaction. We might get some immediate joy from being nasty, but the greater joy is restraint and receiving greater joy later, that you actually had the discipline to control your tongue.

I have opinions that are very, very strong. I feel strong about tort reform, not because I am an attorney. I have four children. None of them are attorneys. But I personally feel strongly about it because of some personal things that happened in my own family that could have gone to court, that we did not take to court for a lot of reasons. One of the things that we felt strongly about was our own integrity, so we didn't go to court.

But my challenge is to state whatever strong feelings I have in a tone that raises the level of the conversation and honors those who disagree with me.

When you look at the roots of the word "civility," to be civil is to be a citizen, a respected part of the community. So to be uncivil is to fracture the community, locally, nationally and internationally, and that is something that none of us can afford to do.

Not long ago President Gerald Ford died, and I was reminded of a story of his days here in this House. He held regular debates here in Washington with his Democratic counterpart Congressman Thomas Hale Boggs. They would debate at the National Press Club. At Congressman Gerald Ford's suggestion, they would ride over from the Capitol to the National Press Club and agree on the topic of the debate. Can you imagine that happening in 2007? Then, after the debate, they would go out and have lunch.

Mr. Speaker, that is the kind of House I think we need to demand as a part of what takes place in this city called Washington, D.C. I hope, I even pray, that the men and women of this great body will learn to exercise restraint, because what we do and say here in this hallowed place actually reverberates and ends up traveling all across the length and breadth of this Nation, and the words we say will impact the people around this country.

I say again, there are few Members of this Congress, if any, who would say to their children, watch C-SPAN and watch the leaders of this Nation debate, so that they can show you how to act around people with whom you have a disagreement.

We can do better, and I think we will. I believe that because Mrs. CAPITO is interested in doing this, the road towards civility is now under construction, and I enjoy serving with the gentledady from West Virginia.

Mrs. CAPITO. Mr. Speaker, I thank the gentleman from Missouri for participating tonight. He is a very able debater. I learned in our first debate when we debated tax reform that you are a wonderful closer too, so I hate to close.

But I would like to talk a little bit about civility, because it is very important to me. It is about being polite. It is understanding that we have different views and that we don't disrespect one another because of that. It is about believing that our ideas, yes, we believe our ideas are the right ideas, but it doesn't necessarily mean that the opposite ideas or a different idea doesn't have merit. It also doesn't mean that because we are in different parties, we don't have a lot of to give and we don't have a lot to share. I think a lot of that gets lost here on the floor of the House.

My great fear is because of the partisanship and the evolved incivility of our debate, that when that person turns on that TV or that young person turns on C-SPAN to watch debate, they see the rancor and they see the acrimonious debate and some of the language that is used, and what do they do? They turn it off. And then what are they doing? They are not listening to the merits of the topic. They are not listening to tax reform ideas or medical malpractice reform ideas or the war in Iraq differing ideas, because of the tone, and the way it is delivered and the words that are used have lost their way and have turned the American public off.

Now, when I go and speak to people in my district and I begin to talk like that, people start nodding their heads, you are right. We do stop listening. We are no longer interested.

So I think while these hallowed halls have had more than their share of vigorous debate, there is a good way to do it, and there is a good way to convey our ideas in a very civil way.

I really appreciate the way, when you said that Gerald Ford and Hale Boggs used to drive over together and then have lunch afterwards, I think it is a little late for lunch tonight, so I think we will have to do that another time. But I have enjoyed debating this topic. I look forward to the next topic that we debate. I hope that when we get together again, maybe we can get some of our other colleagues here and have more of a round-robin so we can get our colleagues not only involved in the debate on the topic, but also demonstrating a civil way to present ideas to the American public.

□ 2340

#### GENERAL LEAVE

Mr. CLEAVER. Mr. Speaker, I ask unanimous consent that all Members